

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition of	File No. CSR-8859-E
Comcast Cable Communications, LLC	Spokane, Washington
Opposition to Effective Competition Petition in Spokane, Washington	

To: The Chief, Media Bureau:

**OPPOSITION TO PETITION FOR SPECIAL RELIEF
BY THE CITY OF SPOKANE, WASHINGTON**

The City of Spokane, Washington (“City”), hereby respectfully submits the following comments in opposition to Comcast Cable Communications, LLC’s (“Comcast”) Petition For Special Relief (“Petition”). The Petition seeks to revoke the certification of the City to regulate Comcast’s basic cable rates under a finding that Comcast’s cable system in the City is subject to effective competition pursuant to Section 623¹ of the Communications Act of 1934, as amended (the “Act”). The Petition should be denied because Comcast has failed to meet its burden of affirmatively rebutting the presumption against the existence of effective competition.

I. Background

On November 21, 2013, Comcast submitted to the FCC a “Petition for Special Relief” requesting that the FCC revoke the City’s authority to regulate Comcast’s basic

¹ Codified at 47 U.S.C. § 543(1)(1)(B).

cable rates pursuant to a finding that it is subject to effective competition as defined under the Section 623 of the Act. Section 623, as amended by the Telecommunications Act of 1996, has four tests for determining whether effective competition exists. Comcast, in its Petition, asserts that it has met the second test for effective competition justifying an order exempting Comcast from further rate regulation imposed pursuant to Section 623. The second test, often referred to as the "Competing Provider Test", finds effective competition to exist when the franchise area is:

- a. served by at least two unaffiliated multichannel video programming distributors ("MVPDs") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and
- b. the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest MVPD exceeds fifteen percent of the households in the franchise area.²

According to the Commission's rules, "[i]n the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition."³ Comcast bears the burden of rebutting this presumption.⁴ Moreover, the Commission has determined that it "will use those household and subscriber figures proffered in the pleadings that are most adverse to a finding of competition."⁵ Thus, where a cable operator and a local franchise authority submit conflicting evidence based on zip code

² Telecommunications Act, § 623(1)(1)(B), 47 U.S.C. §543(1)(1)(B); *see also* 47 C.F.R. §76.905(b)(2). Emphasis added.

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.907 (b) (" [t]he cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition, as defined in § 76.905, exists in the franchise area. ").

⁵ *Tri-Lakes Cable, Monument, Colorado*, 12 FCC Rcd. 13170, 13179-80 (Cable Servs. Bur. 1997); *see also Falcon Community Ventures L.L.P. d/b/a Falcon Cable TV, Roseburg, Oregon*, 13 FCC Rcd. 21762, 21767 (Cable Servs. Bur. 1998).

analysis, the Media Bureau can refuse to evaluate the operator's evidence, requesting instead that the operator submit more accurate evidence.⁶

In its Petition, Comcast asserts that the Competing Provider Test has been met in the City with the entry of two direct broadcast satellite ("DBS") providers -- DirecTV and DISH Network. While DBS providers have been determined by the FCC to be qualified MVPDs for purposes of an effective competition analysis, their existence alone does not demonstrate the existence of effective competition. Comcast has failed to show that there is a sufficiently high level of DBS penetration within the franchise area to overcome the strong presumption against effective competition.

II. Comcast Fails to Satisfy the Effective Competition Test

The Act lays out extensive mechanisms to protect cable subscribers from abusive and monopolistic pricing behavior. In this regard, the Act specifies that a cable operator must be subject to effective competition in the relevant franchise area before the rates for basic service, associated equipment and installations can be deregulated. Because of the possible adverse impact on consumers, particularly senior citizens and other individuals living on fixed-incomes, flowing from the elimination of rate regulation, there is a congressionally created presumption against the existence of effective competition. It is the burden of the petitioning cable operator to rebut this presumption and affirmatively demonstrate the presence of effective competition.

⁶ Alert Cable TV of Minnesota, Inc., d/b/a Bright House, 18 FCC Rcd. 12848, 12849-50 (Media Bureau 2003).

Based upon the DBS providers' nationwide footprint and prior FCC determinations, the City accepts (without conceding) that the two DBS providers in the City satisfy the first prong of the Competing Provider test -- comparable programming is being made available to at least 50 percent of the households in the franchise area and these potential consumers are reasonably aware of the service availability. Comcast, however, has failed to satisfy the second prong of the Competing Provider test.

Specifically, Comcast has not met its burden of demonstrating that the number of households subscribing to multichannel video programming other than the largest MVPD exceeds 15 percent of the households in the Comcast franchise area in the City. Comcast relies upon outdated and incorrect occupied household data within the City and therefore its Petition cannot be sustained. Moreover, the zip code information which Comcast relies upon include two 5 digit zip codes that cover areas entirely outside the City limits.

Occupied Households. Comcast references 87,271 occupied households in the City and 7,020 vacant households. Comcast relies upon the 2010 Census Redistricting Data for this information. Comcast's data is out of date and inaccurate. Scott Chesney, the Director of Planning and Development Services for the City has reviewed the City's internal records and confirmed that as of the end of 2013 there are a total of 96,410 households in the City.⁷ In addition, the vacancy rates in the City are now greatly improved over the 2010 data. The 2010 Census Redistricting Data was gathered during one of the worst economic recessions the State of Washington has suffered in the last 30 years. At the time the 2010 Census Redistricting Data was gathered, vacancy rates in the

City were far higher than today.⁸ Mr. Chesney estimates that the total vacancy rate in the City at the end of 2013 is no greater than four percent (4%) which means that the total occupied households in the City limits equals approximately 92,554.⁹ Based upon this more current occupied household information, the penetration rate for the DBS Providers in the City is 14.92 % (13,808 DBS Subscribers divided by 92,554 occupied households), below the required 15% threshold.

Zip Code Data. In addition, Comcast has relied upon zip code data that is inaccurate. Two of the zip codes used by Comcast (99212 and 99026) are not within the City of Spokane but rather are completely outside the City limits.¹⁰ Given the dearth of information provided by SNL and SBCA and included in the Comcast Petition, the City has no ability to verify the accuracy of the data used to calculate the total number of DBS subscribers.

There is a strong congressional presumption against the finding of effective competition and Comcast should not be allowed to meet its heavy burden on the basis of outdated, inaccurate or incomplete information.

III. Conclusion

The City submits that Comcast has failed to meet its burden under the Competing Provider Test. Comcast has failed to meet its burden that the DBS providers collectively serve 15 percent or more of the households in the franchise area required under 47 U.S.C.

⁷ See Exhibit 1, Affidavit of Scott Chesney.

⁸ See Exhibit 1, Affidavit of Scott Chesney.

⁹ See Exhibit 1, Affidavit of Scott Chesney.

¹⁰ See Exhibit 1, Affidavit of Scott Chesney.

§ 543(l)(1)(B) of the Cable Act. The City respectfully requests that the Media Bureau reject Comcast's Petition for Determination of Effective Competition.

Respectfully submitted,

City of Spokane, Washington

By:


Brian T. Grogan

Moss & Barnett

A Professional Association

4800 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

(612) 877-5340

January 22, 2014

Its: Attorneys

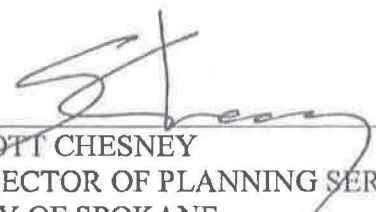
EXHIBIT 1
AFFIDAVIT OF SCOTT CHESNEY

I, Scott Chesney, hereby state the following:

1. I am employed as the Director of Planning and Development Services of the City of Spokane, Washington and have been in that position for two (2) years.
2. I am familiar with the data from the U.S. Census Bureau and the Effective Competition Tracking Report referenced in this Opposition to Petition for Special Relief by the City of Spokane, Washington.
3. As Planning Director with the City of Spokane I have personal knowledge regarding the jurisdictional limits of the City of Spokane.
4. The Comcast Petition requesting "Effective Competition" relies on information from zip codes that are not within the City of Spokane. Zip code 99212 and 99026 are completely outside the City.
5. It is not possible to determine, based on the limited information provided with Comcast's Petition, whether the data supplied by SNL, and thereafter utilized by SBCA, includes addresses outside of the City.
6. The zip code information provided for the blended zip code areas (99217, 99223 and 99208) fails to demonstrate how the residences within adjacent jurisdictions are distinguished.
7. Since January 1, 2010 the City of Spokane has constructed 1,047 new apartments and 1,072 new single family residences for a total of 2,119 new households in the City. This brings the total households in the City to 96,410.
8. Based upon information available in the Fall 2013 Spokane-Kootenai Real Estate Research Report the vacancy rates for apartments and single family residences in the City of Spokane are substantially lower than the vacancy rates applicable at the time of the 2010 Census Redistricting Data. Based upon the information available to me, I estimate the vacancy rate for all households in the City of Spokane to be approximately four percent (4%).
<http://www.spokanerealtor.com/RealEstateReport/Fall2013/Fall2013RealEstateReport.pdf>

Dated: January 22, 2014

By:


SCOTT CHESNEY
DIRECTOR OF PLANNING SERVICES
CITY OF SPOKANE

CERTIFICATE OF SERVICE

I, Terri L. Hammer, a paralegal at Moss & Barnett, do hereby certify on this 22nd day of January, 2014 that a true and correct copy of the foregoing "Opposition to Petition for Special Relief" has been sent via U.S. Mail, postage prepaid, to the following:

William Lake, Chief
Media Bureau
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington DC 20554

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Washington DC 20554

Ms. Terri L. Pfister
City Clerk
City of Spokane, Washington
808 West Spokane Falls Boulevard
Spokane, WA 99201-3303

Tim Szambelan
Assistant City Attorney
City of Spokane, Washington
808 West Spokane Falls Boulevard
Spokane, WA 99201-3303

Mr. Richard Cook
Clerk-Treasurer
City of Airway Heights
S. 1208 Lundstrom
Airway Heights, WA 99001

Ms. Ann Marie Gale
City Treasurer
City of Liberty Lake
22710 E. Country Vista Drive
Liberty Lake, WA 99019

Hon. Daniel Mork
Mayor, City of Millwood
9103 E. Frederick Avenue
Spokane, WA 99206

Hon. Tom Towey
Mayor, City of Spokane Valley
11707 E. Sprague, Suite 106
Spokane Valley, WA 99206

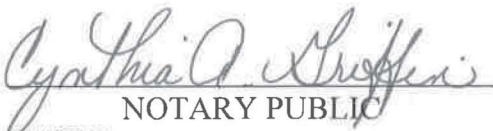
Wesley R. Heppler
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW, Suite 800
Washington DC 20006
Counsel for Comcast Cable Communications, LLC

Frederick W. Giroux
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, NW, Suite 800
Washington DC 20006
Counsel for Comcast Cable Communications, LLC



Terri L. Hammer

SWORN TO BEFORE ME this
22nd day of January, 2014.


NOTARY PUBLIC

2444827v3

